

In the Matter of Merchant Mariner's Document No. DZ-10034 and all
Issued to: VINCENT J. MEOLA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1290

VINCENT J. MEOLA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 21 March 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board the United States SS SANTA PAULA under authority of the document above described, on 6 October 1960, Appellant wrongfully kicked crew member Barrillo.

Appellant was properly notified to be present at the beginning of the hearing on 26 January 1961; but he did not appear at the hearing until a later date which was after the two Government witnesses had testified. These two seamen were Barrillo and the storekeeper who witnessed the incident.

Appellant testified that he did not kick Barrillo until after he pulled out a knife.

FINDINGS OF FACT

On 6 October 1960, Appellant was serving as a wiper on board the United States SS SANTA PAULA and acting under authority of his document while the ship was in the port of New York.

About 1300 on this date, fireman-watertender Barrillo was discussing something with the ship's storekeeper. Appellant's interjection of offensive remarks directed toward Barrillo led to a heated argument between the latter two seamen. Appellant suddenly kicked Barrillo in the chest two or three times. When Barrillo put his hand up to his chest, Appellant thought Barrillo was reaching for a knife and ran away as the Second Assistant Engineer arrived on the scene. Barrillo did not pull out a knife. He received medical treatment for his injuries.

Appellant's prior record consists of an admonition in 1959 for creating a disturbance.

OPINION

The grounds for appeal are that the two witnesses lied and they were not available for cross-examination by the defense.

Appellant waived his right to cross-examine the witness because he was not present when they testified on 9 March 1961. Appellant received timely notice that the hearing would reconvene on this date but he failed to appear after telephoning the Investigating Officer, on about 25 February, and stating that he would not be present because he had to sail in order to maintain his status on the union sailing list. This was not an adequate excuse for failing to attend the hearing. There is no record that Appellant was employed on a ship at the time he received the notice or from the latter time until after 9 March.

As a matter of credibility, the Examiner accepted the testimony of the two Government witnesses that Barrillo did not have a knife in his hand. Barrillo testified it was only after he was kicked that he pulled out some keys which Appellant could have mistaken for a knife. The storekeeper stated he did not see Barrillo with a knife during the incident. Therefore, there is no reason to question the Examiner's rejection of the version presented by Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 21 March 1961, is **AFFIRMED**.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 2nd day of March 1962.